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No. 938

In the Supreme Court of the United States

OCTOBER TERM, 1966

STATE OF LOUISIANA, ET AL,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

On Appeal From the United States District Court
Eastern District of Louisiana
Baton Rouge Division

JURISDICTIONAL STATEMENT

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Appellant submits this statement in accordance with Rule 15 of the United States Supreme Court Rules to show that the instant appeal is within this Court's jurisdiction, in that the validity of the provisions of Article 8, Sections 1 and 18 of the Constitution of Louisiana, and Sections 31(2), 32, 36, 191A, 350 and 734 of Title 18 of the Louisiana Revised Statutes, were brought in question in the United States District Court for the Eastern District of Louisiana on the grounds of their being repugnant to the Fourteenth Amendment to the Constitution of the United States and the Voting Rights Act of 1965, passed by the United States Congress, and the decision of that Court was expressed in favor of their invalidity.

OPINIONS BELOW

The majority opinion of the Federal District

Court for the Eastern District of Louisiana, the organ of that Court being the Honorable John Minor Wisdom, Circuit Judge, dated August 10, 1966, is unreported, but is attached hereto as part of the Appendix. The Honorable E. Gordon West, District Judge, concurred in part and dissented in part and that decision is likewise attached. On August 11, 1966, the Honorable John Minor Wisdom, U. S. Circuit Judge, and the Honorable Herbert W. Christenberry, U. S. District Judge, issued a further order of clarification by means of a telegram, and a copy of this further order is attached. On August 12, 1966, a further order of clarification was issued, a copy of which is attached. On September 20, 1966, a second order of clarification was issued by a majority of that Court, together with a dissenting opinion by the Honorable E. Gordon West, of that same date, copies of which are attached. These opinions are all printed in the Appendix at pages 26 through 64. All opinions and orders of clarification are unreported.

JURISDICTION

This was a civil proceeding filed as a supplemental complaint by the Attorney General of the United States, in the name of the United States, for preventive relief under Section 7B and 12D of the Voting Rights Act of 1965, Public Law 89-110. Additional jurisdiction was alleged under Section 12F of the Voting Rights Act of 1965. Article 8, Sections 1 and 18 of the Constitution of the State of Louisiana, and Sections 31(2), 32, 36, 191A, 350, and 734 of Title 18 of the

Louisiana Revised Statutes were attacked as being unconstitutional on their face or through their application.

The opinions of the Federal District Court for the Eastern District of Louisiana were rendered on August 10, 11 and 12, and September 20 of 1966. The Notice of Appeal to this Honorable Court were filed with the Clerk of the United States District Court, Eastern District of Louisiana, Baton Rouge Division, on September 8, 1966. An extension of time in which to file the jurisdictional statement and to accomplish docketing of this case was filed on October 31, 1966 with the Clerk of the United States District Court, Eastern District of Louisiana, and the Honorable E. Gordon West, District Judge, issued an order granting defendants-appellants an additional sixty days from October 31, 1966 in which to file and docket this case on appeal with the Clerk of the United States Supreme Court by authority of Section 1, Rule 13 of the United States Supreme Court.

This Honorable Court has jurisdiction of this appeal under 28 U.S.C.A. 1253 for the reason that this was a proceeding required by an act of Congress to be heard and determined by a District Court composed of three Judges, and after Notice of Hearing an Interlocutory or permanent injunction was issued. (See: *Radio Corporation of America v. United States*, 95 F.Sup. 660, affirmed 71 S.Ct. 806, 341 U.S. 412, 95 L.Ed. 1062 (1950); *St. Louis & O'Falon Ry. Co. v. U. S.*, 49 S.Ct. 384, 270 U.S. 461, 73 L.Ed. 798 (1929);

Zemel v. Rusk, 85 S.Ct. 1271, 381 U.S. 1, 14 L.Ed.2d 179 (1965).

STATUTES INVOLVED

This appeal involved the validity, under the Fourteenth Amendment to the Constitution of the United States and Public Law 89-110 (Voting Rights Act of 1965), of the following Louisiana constitutional and statutory provisions:

1. Article VIII, Section 1, Louisiana Constitution:

"Right to Vote. After January 1, 1922, the right to vote in Louisiana shall not exist except under the provisions of this Constitution.

"Citizenship and age. Every citizen of this State and of the United States, native born or naturalized, not less than twenty-one years of age, and possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election in the State by the people:

"(a) Residence. He shall have been an actual bona fide resident of the State for two years, of the parish one year, of the municipality in municipal elections four months, and of the precinct, in which he offers to vote, three months next preceding the election; provided, that removal from one precinct to another in the same parish shall not operate to deprive any person of the right to vote in the precinct from which he has removed until three months after such removal; provided, that removal from one parish to another shall not deprive

any person of the right to vote in the parish from which he has removed for district officers to be elected in a district which includes the parish to which he has removed, or for State officers, whether the parish be in the same district or not, until he shall have acquired the right to vote for such officers in the parish to which he has removed.

"(b) Registration. He shall be, at the time he offers to vote, legally enrolled as a registered voter on his own personal application, in accordance with the provisions of this Constitution, and the laws enacted thereunder.

"(c) Character and literacy. He shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government. He shall be able to read and write, and shall demonstrate his ability to do so when he applies for registration by making, under oath, administered by the registration officer or his deputy, written application therefor, in the English language, or his mother tongue, which application shall contain the essential facts necessary to show that he is entitled to register and vote, and shall be entirely written, dated, and signed by him, except that he may date, fill out, and sign the blank application for registration hereinafter provided for, and, in either case, in the presence of the registration officer or his deputy, without assistance or suggestion from any person or any memorandum whatever, other than the form of application hereinafter set forth; provided, however, that, if the applicant

be unable to write his application in the English language, he shall have the right, if he so demands, to write the same in his mother tongue from the dictation of an interpreter; and, if the applicant is unable to write his application by reason of physical disability, the same shall be written at his dictation by the registration officer or his deputy, upon his oath of such disability.

"Until and unless otherwise provided by law, the application for registration above provided for, shall be a copy of the following form, with the proper names, dates and numbers substituted for the blanks appearing therein, to-wit:

"I am a citizen of the State of Louisiana. My name is Mr. ....., Mrs. ....., Miss ..... I was born in the State (or country) of ....., Parish, (or county) of ....., on the ..... day of ....., in the year ..... I am now ..... years, ...months and ..... days of age. I have resided in this State since..... ....., in this parish since ....., and in precinct No. ....., in Ward No. ....., since ....., and I am not disfranchised by any provision of the Constitution of this State.

"Said applicant shall also be able to read any clause in this Constitution, or the Constitution of the United States, and give a reasonable interpretation thereof.

"(d) Character and understanding. If he is not able to read or write, then he shall be entitled to register if he shall be a person of

good character and reputation, attached to the principles of the Constitution of the United States and of the State of Louisiana, and shall be able to understand and give a reasonable interpretation of any section of either Constitution when read to him by the registrar, and he must be well disposed to the good order and happiness of the State of Louisiana and of the United States and must understand the duties and obligations of citizenship under a republican form of government.

"(e) Identity. He must in all cases be able to establish that he is the identical person whom he represents himself to be when applying for registration, and when presenting himself at the polls for the purpose of voting in any election or primary election."

2. Article VIII, Section 18, Louisiana Constitution:

"There shall be a registrar of voters for the parish of Orleans, who shall be appointed by the Governor, and one for each parish in the State, who shall be appointed by the police jury or other governing authority of such parish.

"The Governor shall issue a commission to each registrar who shall thereupon make such bond, subscribe to such oath, and receive such compensation as the Legislature may prescribe; provided, that the State and the parish shall each pay one-half of such compensation.

"The Governor, Lieutenant-Governor, and Speaker of the House of Representatives shall

compose the Board of Registration and any two members of same shall have power to remove, at will, any registrar in this State.

"The first Registrar in each parish shall be appointed on or before December 15, 1921, and a new and complete registration shall be had under this Constitution in every parish beginning January 2nd, 1922.

"Should a Registrar be not appointed by December 15, 1921, or any subsequent vacancy be not filled, within thirty days after its occurrence, by the above constituted authority, a majority of the Board of Registration shall appoint and the Governor shall commission a Registrar of Voters in each parish which has none.

"No Registrar of Voters shall be elected or appointed to any other office within twelve months after vacating that of Registrar.

"No other officer or person shall exercise any of the powers or duties of the Registrar of Voters after December 15th, 1921; provided, this shall not be construed to forbid the Legislature to authorize the appointment, by the Registrar, of deputy registrars."

3. Louisiana Revised Statutes 18:31(2):

"He shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government"

4. Louisiana Revised Statutes 18:32:

"Application for registration; form; addi-

tional information for identification of voter at polls

"A. The form to be used for application for registration shall contain the following in substantially the following form:

APPLICATION FOR REGISTRATION
OFFICE OF REGISTRAR OF VOTERS

PARISH OF_____
STATE OF LOUISIANA

My Name is_____
(Miss, Mrs. or Mr.)

_____
(First) (Initial) (Last)

I live at_____
(House Number) (Street) (Apt. Number)

My sex is (circle one) Male. Female

Have you been a resident of this state for more than one year, of this parish for over six months, and lived at your present address for more than three months, immediately preceding this date. (Check one)
Yes_____ No_____

6. The place of my birth is_____
(City), (Parish, County, or Province)

_____
(State or Foreign Country)

7. I am over twenty-one years of age and the date of my birth is_____
(Month) (Day) (Year)

8. I was last registered as a voter in (leave blank if NONE)_____
(Parish or County) (State)

9. I hereby declare my party affiliation to be (circle one):

Democrat Republican State Rights None

Other _____
Specify

I am a citizen of the United States and of the state of Louisiana and have not been disfranchised by any provisions of the constitution of this state. (Indicate your answers to the following questions in the spaces provided. All questions must be answered).

Have you been convicted of a felony without receiving a full pardon and restoration of franchise? Yes ( ) No ( )

Have you been convicted of two or more misdemeanors and sentenced to a term of ninety (90) days or more in jail for each such conviction, other than traffic and/or game law violations, within five years before the date of making this application for registration as an elector? Yes ( ) No ( )

Have you been convicted of any misdemeanor and sentenced to a term of six (6) months or more in jail, other than traffic and/or game law violations, within one year before the date of making this application for registration as an elector? Yes ( ) No ( )

Have you lived with another in "common law" marriage within five years before the date of making this application for registration as an elector? Yes ( ) No ( )

Have you given birth to an illegitimate child

within five years before the date of making this application for registration as an elector? (The provisions hereof shall not apply to the birth of any illegitimate child conceived as a consequence of rape or forced carnal knowledge.) Yes ( ) No ( )

Have you acknowledged yourself to be the father of an illegitimate child within five years before the date of making this application for registration as an elector? Yes ( ) No ( )

Under Louisiana Revised Statutes 18:222, no person shall register falsely or illegally as a voter, or make a false statement in an affidavit or other document that he presents for the purpose of procuring himself to be registered or to be retained as a registrant. No person shall knowingly present, for any purpose within the purview of this Chapter, an affidavit or other document containing a false statement.

Whoever violates this Section shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned for not less than six months nor more than one year, or both. The penalties shall be doubled for the second or any succeeding offense of the same character.

I do hereby solemnly swear or affirm that I will faithfully and fully abide by all the laws of the State of Louisiana, so help me God.

Signature_____

Sworn to and subscribed before me this____ day of_____, 19____.

_____

(Deputy) Registrar

B. The application form shall also be provided with additional space for the following information to be completed by the registrar for identification of voters at the polls by commissioners, if necessary.

Ward No._____ Pct. No._____
My race is_____.
The color of my eyes is_____.
My mother's maiden name is_____.
My occupation is_____.
My employer is_____.

C. The application form shall also be provided with an additional space in a form convenient for the notation thereon of:

(1) Changes of address of the applicant within the parish;
(2) Changes of name of the applicant, and
(3) Remarks.

D. The Board of Registration may change or rearrange the order of the questions and registrars may alternate said rearranged applications so long as they contain the information herein provided for.

E. Each application form shall have printed on it the following information:

Upon request, the registrar shall furnish each applicant a copy of his application form."

5. Louisiana Revised Statutes 18:36:

"If the registrant cannot read or write, he may register if he is a person of good character and reputation, attached to the principles of the Constitution of the United States and

of the State of Louisiana, and understands and can give a reasonable interpretation of any section of either constitution when read to him by the registrar or his deputy. He shall be well disposed to the good order and happiness of the State of Louisiana and of the United States and shall understand the duties and obligations of citizenship under a republican form of government. In such case the registrar or his deputy shall fill out at the dictation of the applicant, the facts set forth in the blank application, which, when completed, shall then be read to him, and to which the applicant shall sign his name if able to do so, otherwise shall sign his mark, attested by the registrar or his deputy, and shall make affidavit to the truth of the facts therein set forth."

6. Louisiana Revised Statutes 18:191A.:

"Except as otherwise specifically provided in this Chapter, the board of registration shall from time to time prescribe by rules and regulations duly promulgated the method of the administration of this Chapter, and shall prescribe and direct the registrars of voters to propound an objective test of citizenship under a republican form of government, which said objective test shall be provided for, prepared and furnished to the registrars by the board of registration, and the character and forms of record, affidavits and other documents necessary or proper, in its opinion, to carry into effect the provisions of this Chapter, and shall file them in the office of the secretary of state."

7. Louisiana Revised Statutes 18:350:

"No voter shall receive assistance of any kind in the casting of his vote except as provided in this Section. A voter who exhibits to a commissioner a registration certificate which declares on its face that said voter is by reason of blindness or physical handicap unable to cast his vote without assistance, shall receive the assistance of a person of his own selection in the casting of his vote, but he shall not select a commissioner. Such person assisting the voter may select a person of his own selection and said person may be the spouse, child, grandchild, brother, sister or other blood relative of the voter, if such spouse or blood relative resides within the state of Louisiana, provided that any voter who possess a valid registration certificate which declares on its face that said voter is by reason of blindness unable to cast his vote without assistance may receive the assistance of a person of his own selection in the casting of his vote whether or not such person is a blood relative of the voter. The person selected shall retire with the voter to the booth and assist him in casting his vote and the commissioners shall enter the name and address of the person giving such assistance to the voter opposite that of the voter upon the poll list. No person other than the one selected by the voter to assist him shall be allowed to assist a voter in the casting of his vote.

"In the event that said voter has become blind or otherwise physically disabled, which would

entitle him to the assistance provided for under this Section since his registration, a certificate of a medical doctor or optometrist certifying to the irremediable defectiveness of vision or physical handicap shall be sufficient proof of blindness or disability to entitle the voter to such assistance.

"The inability to read or write shall not entitle a voter to assistance in the casting of his vote.

"No person selected by a voter to render assistance to him shall reveal the name of any person for whom the voter has voted, or anything that took place while the voter was being assisted.

"Whoever violates this Section shall be punished as provided in R.S. 18:369."

8. Louisiana Revised Statutes 18:734:

"Any voter who presents to the presiding commissioner evidence as provided by R.S. 18:732 that by reason of blindness or other physical disability he is unable to mark his ballot shall, upon request, be entitled to assistance in the marking thereof in accordance with the provisions of R.S. 18:732. Neither the voter nor the person giving assistance to the blind or physically disabled voter shall thereafter give any information regarding the assistance."

QUESTIONS PRESENTED

The following questions are presented by this appeal:

(1) Does Public Law 89-110, commonly referred to as the Voting Rights Act of 1965, apply to the State of Louisiana.

(2) Is the Attorney General of the United States exceeding his authority under the Voting Rights Act of 1965, by, but not limited to, registering people ineligible to vote under the Voting Rights Act of 1965 and under Louisiana law not inconsistent with the Fourteenth Amendment of the United States Constitution and Public Law 89-110.

(3) Whether the Voting Rights Act of 1965 requires or allows assistance to be given to a voter who makes claim of his illiteracy, in the operation of a mechanical voting device.

(4) Whether the Voting Rights Act of 1965 permits or allows the federal observers to be present within the voting place during elections and whether such observers may go behind the curtains of voting machines during the casting of the ballot. Also, must commissioners of elections, appointed under Louisiana law, inform all voters who make declaration of their illiteracy that they are entitled to have the assistance of federal observers, including their placement in the voting machine.

(5) Whether the commissioners of election of the State of Louisiana may enforce the provisions of Louisiana law requiring certain prerequisites of the voter before the casting of his vote, where such conditions and requirements are not inconsistent with the Voting Rights Act of 1965 and the United States Constitution.

STATEMENT OF THE CASE

In October, 1963 the United States filed the original complaint challenging the constitutionality of the Louisiana application form as a test or device in determining the qualifications of applicants to register for voting. The court heard the case November 30, 1964. Important events affecting the litigation have occurred since then.

In June, 1965, the State of Louisiana revised its form of Application for Registration. August 6, 1965, Congress adopted the Voting Rights Act of 1965. On that same day, in accordance with Section 4(b) of the Act, the Attorney General of the United States determined that the State of Louisiana had on November 14, 1964, maintained a test or device within the meaning of the Act; the Director of the Census determined that less than 50 percent of the persons of voting age residing in Louisiana voted in the November 3, 1964, presidential election. In August, the Attorney General of the United States certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment in East Carroll, East Feliciana, West Feliciana, Ouachita, and Plaquemines Parish, Louisiana. Federal examiners entered on duty in each of these parishes and, except in Plaquemines Parish where, because of natural disaster, the operation was suspended for a period of time and then later resumed, they have performed their duties under the Voting Rights Act of 1965 until the present time. By the end of November, the examiners in the five parishes had

listed approximately 13,258 persons as eligible to vote and had certified and transmitted the names of these persons to the respective parish registrars, who, under the Voting Rights Act, have the duty to place these names on the official parish and municipal voting lists.

In three of the parishes—East Carroll, Plaquemines, and Ouachita—certain of the defendants filed suits in State Courts to enjoin the local registrars of voters from placing the names of persons listed by Federal examiners on the official voting lists. In each instance the injunctions sought were entered. The registrars of voters in all five parishes where examiners are operating—East Carroll, East Feliciana, West Feliciana, Plaquemines, and Ouachita—refused to place on the official voting lists of their respective parishes and municipalities the names of the persons certified and transmitted to them by the federal examiners.

November 15, 1965, the United States filed this Supplemental Complaint bringing before the court the changes in the law that occurred after this case was originally submitted and the events which followed those changes. The Supplemental Complaint requests that the defendants and their agents be restrained from (a) failing to place on the official voting lists the names of persons certified and transmitted by federal examiners, (b) complying with or giving force or effect to the state court injunctions, and (c) giving any force or effect to Louisiana statutes or constitutional sections which would prevent

official listing of persons certified by federal examiners.

In addition, the majority opinion of the Court stated:

> "In granting the relief prayed for we have ordered election commissioners to give assistance to voters who are unable to read and write. Louisiana now allows and has always allowed illiterates to vote. Until 1960 Louisiana law provided that a voter 'unable to read and write, shall receive the assistance of a commissioner of his own selection in the marking of his ballot'. LSA-R.S. 18:350. In 1960, as one of a bundle of segregation statutes, the Louisiana legislature enacted Act 499 amending Section 350. This amendment provides, in part, 'The inability to read or write shall not entitle a voter to assistance in the casting of his vote'. This stultifying provision conflicts with the Voting Rights Act of 1965. This Act provides for the suspension of literacy tests in states which have used such tests as a discriminatory device to prevent Negroes from registering to vote. Like any other law, this provision implicitly carries with it all means necessary and proper to carry out effectively the purposes of the law. As Louisiana recognized for 150 years, if an illiterate is entitled to vote, he is entitled to assistance at the polls that will make his vote meaningful. We cannot impute to Congress the self-defeating notion that an illiterate has the right to pull the lever of a voting machine, but not the right to know for whom he pulls the lever."

On August 11, 1966, the Court amended its origi-

nal order under date of August 10, 1966 by adding the following paragraph:

"Assistance to voters because of their inability to read or write shall be rendered in both primary and general elections the assistance shall be rendered substantially in the same manner and under the same conditions as such assistance was rendered when aid to illiterate voters was permitted under the laws of Louisiana bearing in mind changes in the method of voting incident to the use of voting machines see LSA-R.S. 18:350. A voter who declares to a commissioner that he is unable to read or write shall receive the assistance of a commissioner of his own selection in the casting of his ballot the commissioners shall ascertain the wishes of the voter and cast the assisted voter's ballot accordingly a commissioner shall first however require the voter to make a declaration of inability under oath no person shall swear falsely in order to obtain assistance whenever a voter receives assistance, the commissioner in charge of the poll lists shall write the voter's name in the list and shall write in the column of remarks on the poll list opposite the name of the voter the words 'assisted and sworn' no voter shall ask for or receive assistance from an unauthorized person no person who is not a commissioner shall volunteer to assist a voter in physically casting his ballot when a voter calls a commissioner to assist in casting his ballot one other commissioner if any supporting a candidate opposing the elector's preferred candidate shall enter the polling booth and view the casting of the ballot but no other person except commissioners shall give assistance nor shall

any person other than a commissioner at any time enter a polling booth while another voter is in the booth no commissioner shall make known the way an assisted voter casts his ballot, or cast his ballot or cast the ballot contrary to the instructions of the voter nothing in this order affects assistance to blind or physically disabled voters."

On August 12, 1966, there was a hearing had and the following order was issued by the Court:

"a. Interfering with any federal observers, duly appointed under the provisions of Section 8 of the Voting Rights Act of 1965, so as to prevent such observer from exercising any of the powers or performing any of the duties vested in him by Sections 8 and 14 of the Voting Rights Act of 1965 to observe whether persons who are entitled to vote are being permitted to vote at precinct polling places designated pursuant to Section 6 of the Voting Rights Act of 1965, namely East Feliciana, West Feliciana, Ouachita, East Carrell, Madison and Plaquemines.

"b. Preventing such federal observers from being present within the voting place during the election to be held on August 13, 1966.

"c. Preventing such federal observers from observing the assistance provided to illiterate voters requiring assistance; provided however that an observer may not go behind the curtains of the voting machine, while the assisted voter is in the booth, unless requested to do so by the illiterate voter. If the illiterate voter makes such request, the voting commissioners shall allow the observer to go behind the curtains but solely for

the purposes of observing. The observer shall be under the same duty to preserve the secrecy of the ballot as are the commissioners."

On September 8, 1966, defendants filed their Notice of Appeal, however, subsequently, another hearing was had in September, 1966, and the Court issued a further order of clarification on that date, a copy of which is included in the Appendix.

On October 31, 1966, defendants filed a Motion for an Extension of Time in which to File a Jurisdictional Statement, which motion was granted to extend through December 31, 1966.

QUESTIONS PRESENTED ARE SUBSTANTIAL

The State of Louisiana does not come under the Voting Rights Act of 1965, simply because the triggering clause of said Act does not apply to the State of Louisiana, which had more than fifty percent of its citizens registered and voted more than fifty percent of them during the presidential election of 1964. The Court is in error in its statement in Footnote No. 5 to its opinion dated August 10, 1966, wherein the statement is made that Louisiana advanced this same contention before the United States Supreme Court. Louisiana did participate in the case of *South Carolina v. Katzenbach*, 383 U.S. 301, 15 L.Ed.2d 769, but appeared therein only as amicus curiae, and this argument was made to show the unconstitutionality of the triggering clause of the Voting Rights Act of 1965, and for no other reason. This Honorable Court did not, at that time, entertain any factual dispute as to whether

the State of Louisiana actually came under the Act due to the number of citizens registered to vote and the number of citizens that did vote in the presidential election of 1964.

The Voting Rights Act of 1965 does not require that Louisiana election officials provide assistance to illiterates in the casting of their ballots. To the contrary, said Act prohibits the interference with the conduct of State elections where said conduct is not inconsistent with the Federal law. Furthermore, there is no authority for the federal observers provided for under the Voting Rights Act of 1965 to render any assistance to illiterates nor observe the casting of their ballot behind the curtain of mechanical voting machines.

All of the above situations have been placed upon the State of Louisiana by order of Court in these proceedings, and have had the effect of nullifying many provisions of election laws of Louisiana, cutting across the entire election procedure, making the number of statutes affected too numerous to cite herein. It becomes readily apparent that relief granted to plaintiff during these proceedings goes beyond the constitutional prohibition contained in the Fourteenth Amendment to the Constitution of the United States and Federal law as contained in Public Law 89-110, commonly referred to as the Voting Rights Act of 1965.

CONCLUSION

For these reasons, it is strenuously urged that the

District Court below be reversed and that petitioner's demands be dismissed.

Respectfully submitted,

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Attorneys for State of Louisiana,
Appellant

CERTIFICATE

I, Thomas W. McFerrin, a member of the Bar of the United States Supreme Court, do hereby certify that a copy of the above and foregoing Jurisdictional Statement was served on the attorneys for the United States, by placing same in a duly addressed envelope, with air mail postage prepaid, addressed to:

Honorable Ramsey Clark,
Acting United States Attorney General,
U. S. Department of Justice,
Washington 25, D. C.

Baton Rouge, Louisiana, this _____ day of December, 1966.

_____

Thomas W. McFerrin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

VERSUS

STATE OF LOUISIANA, ET AL,
Defendants.

CIVIL ACTION

No. 2866

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Before WISDOM, Circuit Judge, and CHRISTENBERRY and WEST, District Judges.

WISDOM, Circuit Judge:

In October 1963 the United States filed the original complaint challenging the constitutionality of the Louisiana application form as a test or device in determining the qualifications of applicants to register for voting.[1] The court heard the case November 30, 1964. Important events affecting the litigation have occurred since then.

In June 1965, the State of Louisiana revised its form of Application for Registration. August 6, 1965, Congress adopted the Voting Rights Act of 1965. On that same day, in accordance with Section 4(b) of the Act, the Attorney General of the United States determined that the State of Louisiana had on November 14, 1964, maintained a test or device within the meaning of the Act; the Director of the Census determined that less than 50 per cent of the persons of voting age residing in Louisiana voted in the November 3, 1964, presidential election. In August, the Attorney General of the United States certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment

[1] The United States alleged and offered proof to show that (1) the form was applied initially only to Negroes, (2) Negroes were failed for insignificant errors while white persons were either provided assistance or were passed even though they made the same or similar errors as the Negroes who were rejected, and (3) that the form was not a reasonable test of literacy, but was designed and used to discriminate against Negroes, particularly in the age computation, preamble, householder, and have/have not sections of the form. These allegations have already been thoroughly briefed by the parties and the arguments presented will not be rehashed here. The additional relevance of that proof is that it alone would sustain the "appropriateness" of the Voting Rights Act of 1965.

in East Carroll, East Feliciana, West Feliciana, Ouachita, and Plaquemines Parishes, Louisiana. Federal examiners entered on duty in each of these parishes and, except in Plaquemines Parish where, because of natural disaster, the operation was suspended for a period of time and then later resumed, they have performed their duties under the Voting Rights Act of 1965 until the present time. By the end of November, the examiners in the five parishes had listed approximately 13,258 persons as eligible to vote and had certified and transmitted the names of these persons to the respective parish registrars, who, under the Voting Rights Act, have the duty to place these names on the official parish and municipal voting lists.

In three of the parishes—East Carroll, Plaquemines, and Ouachita—certain of the defendants filed suits in State courts[2] to enjoin the local registrars of voters from placing the names of persons listed by federal examiners on the official voting lists. In each instance the injunctions sought were entered. The registrars of voters in all five parishes where examiners are operating—East Carroll, East Feliciana, West Feliciana, Plaquemines, and Ouachita—refused to place on the official voting lists of their respective parishes and municipalities the names of the persons certified and transmitted to them by the federal examiners.

[2] The plaintiffs and defendants in the three state court actions have been made named defendants in this action. They are as follows: Plaintiff—The State of Louisiana by Jack P. F. Gremillion, Defendant—Cecil Manning (East Carroll); Plaintiff—L. H. Perez, Jr., Defendant—Roy Lyons (Plaquemines); Plaintiff—Alvin P. Lassiter, Defendant—Mae Lucky (Ouachita).

November 15, 1965, the United States filed its Supplemental Complaint bringing before the court the changes in the law that occurred after this case was originally submitted and the events which followed those changes. The Supplemental Complaint requests that the defendants and their agents be restrained from (a) failing to place on the official voting lists the names of persons certified and transmitted by federal examiners, (b) complying with or giving force or effect to the state court injunctions, and (c) giving any force or effect to Louisiana statutes or constitutional sections which would prevent official listing of persons certified by federal examiners.

The defendants admit that they will continue to refuse to place on the official voting lists persons certified in the five parishes where examiners are operating—East Carroll, East Feliciana, West Feliciana, Plaquemines, and Ouachita. They contend that the principal operative provisions of the Voting Rights Act are unconstitutional, and in the alternative that the Director of the Bureau of Census, the Attorney General of the United States, and the Civil Service Commission have, in the event the Act is constitutional, misconstrued and misapplied its terms. The case was heard by this Court on December 21, 1965, and briefs were submitted by December 31, 1965.

At the time, the constitutionality of the Voting Rights Act was at issue in *South Carolina v. Katzenbach*, 1966, 383 U. S. 301, 86 S.Ct. , 15 L.Ed.2d 769, then pending before the Supreme Court. The State of Louisiana and several other states participated in

the proceeding as friends of the court. March 7, 1966, the Supreme Court announced its decision, holding certain provisions of the Act to be appropriate, constitutional means under the Fifteenth Amendment for carrying out the purposes of that amendment.

No facts peculiar to South Carolina or to Louisiana would alter the result reached as to the constitutionality of the particular sections[3] of the Voting Rights Act the court considered. This is clear from frequent references by the court to arguments proposed by States participating as *amicus curiae*, by absence of reference to unique factual considerations existing in South Carolina[4], and by the broad sweep of the language employed by the Court in discussing the issues (see particularly 383 U.S. at 327-337.)

As we read the *South Carolina v. Katzenbach*, the Supreme Court considered and rejected the States' argument on the following issues the defendants raise in the instant case:

(1) The Voting Rights Act of 1965 exceeds the power of Congress and encroaches on an area reserved to the States by the Constitution . . . (383 U. S. at 323-29)

(2) Suspension of tests and devices for five years is inappropriate . . . (383 U. S. at 333-34)

(3) The formula provision is inappropriate legislation[5] . . . (383 U. S. at 329-33)

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[3] Sections 4(a)-(d), 5, 6(b), 7, 9, 13(a), and certain procedural portions of 14 (see 383 U.S. at 315-17).

[4] To the contrary, most of the fact-finding of Congress and of the Supreme Court relates to situations in Alabama, Louisiana, and Mississippi.

[5] Louisiana has argued that the coverage formula is uniquely

(4) Appointment of federal examiners is inappropriate . . . (383 U. S. at 335-37)

(5) The formula provision violates the principle of equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impair the separation of powers by adjudicating guilt through legislation . . . (383 U. S. at 323-24)

(6) Limiting litigation to the District Court for the District of Columbia is inappropriate . . . (383 U. S. at 331-35)

(7) The non-review provisions of the Act are arbitrary and deprive the States of due process . . . (383 U. S. at 323-337)

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inapplicable and arbitrary as applied to it because it has the highest percentage of illiterates of any state and yet had 47% of its electorate turn out and cast a vote for Presidential candidates. (Louisiana advanced this same contention in its *amicus curiae* brief and argument before the Supreme Court.)

South Carolina also argued that the coverage formula disregards various local conditions which have nothing to do with racial discrimination (383 U.S. at 329). The Court, noting that South Carolina is a State in which there was "fragmentary evidence of . . . discrimination" (*Ibid.*); nevertheless found the formula to be legitimate and rational. It buttressed its finding, in part, upon the fact that the formula imposing the remedies of the Act reaches Alabama, *Louisiana*, and Mississippi—"the States . . . in which federal courts have repeatedly found substantial voting discrimination" (*Ibid.*) The Court concluded: These arguments, however, are largely beside the point. Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by §4(b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the Fifteenth Amendment.

(8) The Director of the Bureau of Census and the Attorney General have misconstrued and misapplied the formula provision and the voting examiner provision . . . (383 U. S. at 323, 332-33, 335-37)

(9) The challenge procedure is arbitrary . . . (383 U. S. at 334-335)

The only issues remaining relate to the defendants' contentions that the Voting Rights Act was maladministered in Louisiana with respect to:

1. Administrative procedures for obtaining identifying data, and
2. Age and residency requirements for registration.

The Louisiana procedures for identification of applicants for registration are not in conflict with the Voting Rights Act. "The applicant shall in all cases be able to establish that he is the identical person whom he represents himself to be when applying for registration. If the registrar has good reason to believe that he is not the same person, he may require the applicant to produce two credible registered voters of his precinct to make oath to that effect." LSA-R.S. 18:37. See also La.Const. 1921, art. 8, § 1(e). As long ago as 1952, however, Judge Gaston Louis Porterie held that the identification procedure could not be used in an arbitrary or discriminatory manner to prevent Negroes registering to vote; the court granted an injunction against a registrar of voters requiring him to register the Negro plaintiffs. *Byrd v. Brice*, W.D.La., 104 F.Supp. 442; *aff'd* 201 F.2d 664. The defendants have

not proved that the United States and its agents failed to observe the Louisiana statutory requirements as to identification of applicants.

We find that the United States and its agents correctly applied the Louisiana law relating to age requirements, but incorrectly applied the Louisiana law relating to residence requirements. LSA-R.S. 18:36. The agents approved the residential requirements of applicants who would be eligible to vote on the date of the next election rather than on the date of the application. In other respects, the United States and is agents properly administered the Voting Rights Act of 1965 and the uncontested provisions of Louisiana law not in conflict with the Voting Rights Act.

(In granting the relief prayed for we have ordered election commissioners to give assistance to voters who are unable to read and write. Louisiana now allows and has always allowed illiterates to vote. Until 1960 Louisiana law provided that a voter "unable to read and write, shall receive the assistance of a commissioner of his own selection in the marking of his ballot". LSA-R.S. 18:350. In 1960, as one of a bundle of segregation statutes, the Louisiana legislature enacted Act 499 amending Section 350. This amendment provides, in part, "The inability to read or write shall not entitle a voter to assistance in the casting of his vote". This stultifying provision conflicts with the Voting Rights Act of 1965. The Act provides for the suspension of literacy tests in states which have used such tests as a discriminatory device

to prevent Negroes from registering to vote. Like any other law, this provision implicitly carries with it all means necessary and proper to carry out effectively the purposes of the law. As Louisiana recognized for 150 years, if an illiterate is entitled to vote, he is entitled to assistance at the polls that will make his vote meaningful. We cannot impute to Congress the self-defeating notion that an illiterate has the right to pull the lever of a voting machine, but not the right to know for whom he pulls the lever.)

We hold the Voting Right Act of 1965 constitutional, hold the challenged provisions of Louisiana law unconstitutional, and grant the injunction, in accordance with the following order.

ORDER

This matter came on for a hearing on the merits of the application of the United States for a permanent injunction. The court makes the following findings:

(1) Sections 2, 42-d, 5, 6, 7, 9, 12d, 12f, 14b and 14c of the Voting Rights Act of 1965 are an appropriate and constitutional means for carrying out the Fifteenth Amendment and the constitutional responsibilities of Congress.

(2) The provisions of Article VIII, Sections 2 and 18 of the Constitution of Louisiana and Sections 31(2), 32, 36 and 191A of Title 18 of the Louisiana Revised Statutes are suspended insofar as they prescribe tests and devices defined in Section 4(c) of the Voting Rights Act of 1965.

(3) The State Courts of Louisiana do not have jurisdiction to enjoin execution of any provision of the Voting Rights Act of 1965. Accordingly, writs of injunction entered by the state courts against the parish registrars of voters are null and void.

(4) The United States and its agents correctly administered the Louisiana age requirement by accepting for registration persons who would be 21 years old by the date of the next election;

(5) The United States and its agents incorrectly administered the Louisiana residence requirement by listing persons who would be residents of the State for one year, the parish for six months, the municipality for four months, and the precinct for three months by the date of the next election, instead of using the date of the application for listing as the critical date.

(6) In all other respects the United States and its agents properly administered and applied to the State of Louisiana the contested sections of the Voting Rights Act of 1965 and the uncontested provisions of Louisiana law.

It is hereby ORDERED, ADJUDGED, and DECREED that the defendants and their agents, including parish registrars of voters and all parish, municipal and state primary and general election officials and their officers, employees, and successors, and all those in active concert and participation with them, be and hereby are permanently enjoined from:

a. Failing to place upon the official registration

rolls or voting lists of the respective parishes the names of all persons heretofore or hereafter certified and transmitted by federal voting examiners as the names of persons eligible to vote;

b. Complying with or giving any force or effect to the writs of injunction entered against the parish registrars of voters or other local election officials by the Louisiana Courts enjoining said officials from giving full force and effect to the lists of eligible voters transmitted to them by the examiners;

c. Failing to provide at the polls during each federal, state, parish, and municipal election held in the State of Louisiana, including all primary elections, assistance to each voter who because of inability to read or write needs assistance in the operation of any mechanical voting device or in marking his ballot so that his vote be properly cast for the candidates and issues of his choice.

It is further ORDERED that the United States and its agents reexamine the application forms of all persons listed by federal examiners and inform by mail or otherwise those persons who had not resided in the state, parish, precinct, and municipality for the required length of time as of the date of application for listing that they are ineligible to vote. In determining the appropriate action to be taken the United States should employ the following criteria:

(1) Each applicant who has met the State of Louisiana residence qualifications as of the date of this Order, or who otherwise qualifies under the

thirty-day provision of Section 16, Article 8 of the Louisiana Constitution, will not be required to reapply and will be considered as registered or listed to vote as of the date upon which he was originally listed.

(2) Each applicant who has not met the State of Louisiana residence qualifications as of the date of this Order and does not otherwise qualify under the thirty-day provision of Section 16, Article 8 of the Louisiana Constitution will be removed from the list of eligible voters and notified of the revocation of his certificate of eligibility, the reasons therefor, and the date upon which he could become eligible to reapply for registration or listing. Such persons should also be notified that they may appear before an examiner to show cause why they should not be reinstated and deemed listed as of the date of the original listing of their names.

A list of the names and addresses of all applicants for listing recontacted and a statement of action taken and the reasons therefor shall be filed by the United States with this court and submitted to the State of Louisiana and the appropriate parish registrars of voters. Persons named on this list and persons reinstated at least five days prior to the next election, unless removed from the eligibility list by the United States pursuant to this Order or later purged in accordance with generally applicable federal and state law, shall be eligible to vote in all elections for which they are otherwise eligible held in the parish and municipality of their residence.

This court retains jurisdiction of this cause for the purpose of issuing any and all additional orders which may become necessary and appropriate and awards costs to the United States.

This the 10th day of August, 1966.

JOHN MINOR WISDOM,
United States Circuit Judge.

HERBERT W. CHRISTENBERRY,
United States District Judge.

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[6] The Supreme Court considered the constitutionality of §14(b) and found it to be legitimate and appropriate (383 U.S. at 331-335). It follows that the State Courts in Plaquemines, East Carroll, and Ouachita Parishes lacked jurisdiction to issue injunctions. Their orders are void.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

VERSUS

STATE OF LOUISIANA, ET AL,
Defendants.

CIVIL ACTION
NUMBER 2866

* * * * * * *

WEST, District Judge, Concurring in Part and Dissenting in Part:

I concur with the majority opinion on all except two issues involved in this case. As incredible as it may seem, the Congress has, by the Voting Rights Act of 1965, provided for the registration by Federal Registrars in a certain few selected states, of persons who are completely illiterate and who are unable to read, write, or even sign their names. This, despite specific state voting laws to the contrary. And as incredible as it may seem, the United States Supreme Court, in *South Carolina v. Katzenbach*, 383 U. S. 301, 86 S. Ct. 803, 15 L. Ed. 2d 769, has held this law to be constitutional. Thus, this Court, being bound by the Supreme Court pronouncements on this subject, must hold, as the majority opinion does, that the provisions of the Voting Rights Act of 1965 dealing with the registration of voters without the use of a state imposed test or device, must be abided by

the State of Louisiana and its agents. With this conclusion I must agree. But it is my appreciation of the law that only those provisions of state law that are in conflict with the provisions of the Voting Rights Act may be held by this Court to be unenforceable. I must, therefore, respectfully dissent from the majority opinion wherein it enjoins the defendants and their agents, including parish registrars of voters, and all parish, municipal, and state primary and general election officials and their officers, employees, and successors, from "failing to provide at the polls during each federal, state, parish, and municipal election held in the State of Louisiana, including all primary elections, assistance to each voter who, because of inability to read or write, needs assistance in the operation of any mechanical voting device or in marking his ballot so that his vote be properly cast for the candidates and issues of his choice." This part of the Court's order is in direct conflict with Louisiana laws which have not been shown to be in conflict with the Voting Rights Act. In support of this part of its order, the majority opinion states:

> "In granting the relief prayed for we have ordered election commissioners to give assistance to voters who are unable to read and write. Louisiana now allows and has always allowed illiterates to vote. Until 1960 Louisiana law provided that a voter 'unable to read and write, shall receive the assistance of a commissioner of his own selection in the marking of his ballot.' LSA—R.S. 18:350. In 1960, as one of a bundle of segregation statutes, the Louisiana legislature enacted

> Act 499 amending Section 350. This amendment provides, in part, 'The inability to read or write shall not entitle a voter to assistance in the casting of his vote'."

This statement by the majority is simply not accurate. Whether or not Louisiana "now allows and has always allowed illiterates to vote" is highly questionable. But there is simply no doubt that the Louisiana Legislature *did not* in 1960, "as one of a bundle of segregation statutes" amend the law to provide that "the inability to read or write shall not entitle a voter to assistance in the casting of his vote." This has been the law of Louisiana for many, many years, and it was not changed by the Louisiana Legislature in 1960. *Act 309 of 1952* specifically provided:

> "The inability to read or write shall not entitle a voter to assistance in the casting of his vote."

This Act of 1952 provided, among other things, for assistance for blind persons or those with physical handicaps, but as noted above, it specifically denied such assistance to those unable to read or write. *Act 499 of 1960*, referred to in the majority opinion as "one of a bundle of segregation statutes," contains the exact language as found in the *1952* Act, namely: "The inability to read or write shall not entitle a voter to assistance in the casting of his vote."

Prior to the 1960 Act, a blind person, or one with a physical handicap, could call upon a commissioner to assist him in casting his vote. The only change that the 1960 Act made was to provide that such a handicapped person could not select a commissioner to assist

him in casting his vote, but could select certain other designated persons to render him such assistance. Thus, it is obvious that the 1960 statute referred to was not "one of a bundle of segregation statutes," nor did it change the long standing law of Louisiana insofar as assistance to illiterates is concerned. Louisiana, by law, has refused such assistance to those unable to read and write at least since 1952, a time which predates the flood of civil rights litigation triggered by *Brown, et al v. Board of Education of Topeka*, et al, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873, decided in 1954. Indeed, it is highly doubtful that even as far back as 1940, a voter, *because of illiteracy*, was entitled, under Louisiana law, to assistance in actually casting his vote. See Act 46 of 1940. Thus, the disputed provision of Louisiana law can hardly be looked upon as something inspired by the civil rights controversies of the past decade.

There is no provision in the Voting Rights Act for granting such assistance to those unable to read or write, and thus, the disputed provision of Louisiana law is in no way in conflict with any provision of the Voting Rights Act. It must be remembered that we are not talking about a few scattered illiterates. Illiterates by the thousands have now been registered in Louisiana under the provisions of the Voting Rights Act. To require Louisiana officials to grant such assistance to illiterates is tantamount to destroying, in large measure, the secrecy of the ballot contrary to the laws of Louisiana. It also seems to me that the majority's order could be likened to ordering a school or univer-

sity not only to enroll certain designated persons as students, but in addition thereto, to assist those students in the taking of their final examinations. Such an order, I like to believe, would be unthinkable. The avowed purpose of the Voting Rights Act was to eliminate discrimination in the exercise of the franchise. The elimination of the use of tests and devices as a means of testing voter qualifications and the use of Federal Registrars to actually register prospective voters, without regard to state imposed qualifications, has, I believe, accomplished this purpose. It has not been alleged or argued by anyone that I know of that discrimination took place inside the voting booth. The Voting Rights Act was not designed to correct any evils existing inside the voting booth because no such evils have been alleged. I do not believe that this Court has any authority to order that assistance in voting be given to illiterates where no such assistance is provided for by the Voting Rights Act, and where no such assistance is required to eliminate the type of discrimination dealt with by the Voting Rights Act. I must, therefore, dissent from the majority opinion which orders the giving of such assistance to those unable to read or write.

I must also respectfully dissent from the majority opinion insofar as it concludes that the defendants did not prove that the United States and its agents failed to observe the Louisiana statutory requirements as to identification of voter applicants. I agree with the majority in its conclusion that the provisions of Louisiana law, providing for the identification of appli-

cants for registration are not in conflict with the Voting Rights Act. However, on the hearing of this case, Mr. Bruce Rhiddlehoover, the Federal Examiner in the Parish of Plaquemines, specifically testified that he did not require any identification of applicants except from those who could not spell their name or could not pronounce their name so that he could understand it. Also, Mr. Luke Petrovich, who served on the Commission Council in Plaquemines Parish, Louisiana, also testified that the Federal Examiners did not obtain sufficient information by which the prospective voters could be identified. For this reason, I cannot agree with the majority when it says that the defendants failed to prove that the Federal Examiners did not observe the Louisiana statutory requirements as to identification of applicants.

Baton Rouge, Louisiana, August 10, 1966.

E. GORDON WEST,
United States District Judge

WESTERN UNION
TELEGRAM

452P CST AUG 11 66 NSA305

NS LLB098 GOVT PD TONS PWS
NEW ORLEANS LA 11 415P CST

MR HUBERT BANTA CHF DEPUTY MARSHAL

US DISTRICT COURT POST OFFICE BLDG
BATON ROUGE LA

TO HONORABLE JACK P F GREMILLION
ATTORNEY GENERAL OF LA CAPITAL BLDG
BATON ROUGE LA

TO HONORABLE JACK P F GREMILLION
ATTORNEY GENERAL OF LA CAPITAL BLDG
BATON ROUGE LA INFO MR HUBERT BANTA
CHIEF DEPUTY MARSHAL US DISTRICT
COURT PO BLDG BATON ROUGE LA UPON
RECEIVING YOUR TELEGRAM THE COURT
CONFERRED BY TELEPHONE THE COURT
WITH JUDGE WEST DESCENDING DENIES
YOUR REQUEST FOR A STAY IN VIEW OF
THIS DECISION THE COURT IS UNANIMOUSLY
OF THE OPINION THAT NO GOOD PURPOSE
WOULD BE SERVED BY A HEARING ON YOUR
REQUEST FOR A STAY IN ACCORDANCE
HOWEVER WITH YOUR REQUEST FOR A
CLARIFICATION OF THE ORDER THE COURT
HAS AMENDED ITS ORDER BY ADDING THE
FOLLOWING PARAGRAPH "ASSISTANCE TO
VOTERS BECAUSE OF THEIR INABILITY TO
READ OR WRITE SHALL BE RENDERED IN

BOTH PRIMARY AND GENERAL ELECTIONS THE ASSISTANCE SHALL BE RENDERED SUBSTANTIALLY IN THE SAME MANNER AND UNDER THE SAME CONDITIONS AS SUCH ASSISTANCE WAS RENDERED WHEN AID TO ILLITERATE VOTERS WAS PERMITTED UNDER THE LAWS OF LOUISIANA BEARING IN MIND CHANGES IN THE METHOD OF VOTING INCIDENT TO THE USE OF VOTING MACHINES SEE LRA-R.S. 18:350. A VOTER WHO DECLARES TO A COMMISSIONER THAT HE IS UNABLE TO READ OR WRITE SHALL RECEIVE THE ASSISTANCE OF A COMMISSIONER OF HIS OWN SELECTION IN THE CASTING OF HIS BALLOT THE COMMISSIONER SHALL ASCERTAIN THE WISHES OF THE VOTER AND CAST THE ASSISTED VOTER'S BALLOT ACCORDINGLY A COMMISSIONER SHALL FIRST HOWEVER REQUIRE THE VOTER TO MAKE A DECLARATION OF INABILITY UNDER OATH NO PERSON SHALL SWEAR FALSELY IN ORDER TO OBTAIN ASSISTANCE WHENEVER A VOTER RECEIVES ASSISTANCE, THE COMMISSIONER IN CHARGE OF THE POLL LISTS SHALL WRITE THE VOTER'S NAME IN THE LIST AND SHALL WRITE IN THE COLUMN OF REMARKS ON THE POLL LIST OPPOSITE THE NAME OF THE VOTER THE WORDS "ASSISTED AND SWORN" NO VOTER SHALL ASK FOR OR

RECEIVE ASSISTANCE FROM AN UNAUTHORIZED PERSON NO PERSON WHO IS NOT A COMMISSIONER SHALL VOLUNTEER TO ASSIST A VOTER IN PHYSICALLY CASTING HIS BALLOT WHEN A VOTER CALLS A COMMISSIONER TO ASSIST IN CASTING HIS BALLOT ONE OTHER COMMISSIONER IF ANY SUPPORTING A CANDIDATE OPPOSING THE ELECTOR'S PREFERRED CANDIDATE SHALL ENTER THE POLLING BOOTH AND VIEW THE CASTING OF THE BALLOT BUT NO OTHER PERSON EXCEPT COMMISSIONERS SHALL GIVE ASSISTANCE NOR SHALL ANY PERSON OTHER THAN A COMMISSIONER AT ANY TIME ENTER A POLLING BOOTH WHILE ANOTHER VOTER IS IN THE BOOTH NO COMMISSIONER SHALL MAKE KNOWN THE WAY AN ASSISTED VOTER CASTS HIS BALLOT, OR CAST HIS BALLOT OR CAST THE BALLOT CONTRARY TO THE INSTRUCTIONS OF THE VOTER NOTHING IN THIS ORDER AFFECTS ASSISTANCE TO BLIND OR PHYSICALLY DISABLED VOTERS." SINCERELY

JOHN MINOR WISDOM U S CIRCUIT JUDGE JUDGE HERBERT W CHRISTENBERRY U S DISTRICT JUDGE NEW ORLEANS LA (40).

This telegram was found, slipped under the door of the Court room a week after it was delivered.

H. Banta

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

VERSUS

STATE OF LOUISIANA, ET AL,
Defendants.

CIVIL ACTION NO. 2866

ORDER OF CLARIFICATION

The plaintiff having applied for a clarification of this court's Order of August 10, 1966, as amended on August 11, 1966, a hearing having been held on August 12, 1966, on said application before Honorable John Minor Wisdom and Honorable Herbert W. Christenberry, and the defendants, represented by counsel, having appeared and objected to the application,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the defendants and their agents, including parish registrars of voters and all parish, municipal and state primary and general election officials and their officers, employees, and successors, and all those in active concert and participation with them, be and hereby are enjoined from:

"a. Interfering with any federal observers, duly appointed under the provisions of Section 8 of the Voting Rights Act of 1965, so as to prevent such observer from exercising any of the powers or performing any of the du-

ties vested in him by Sections 8 and 14 of the Voting Rights Act of 1965 to observe whether persons who are entitled to vote are being permitted to vote at precinct polling places designated pursuant to Section 6 of the Voting Rights Act of 1965, namely East Feliciana, West Feliciana, Ouachita, East Carroll, Madison and Plaquemines.

b. Preventing such federal observers from being present within the voting place during the election to be held on August 13, 1966.

c. Preventing such federal observers from observing the assistance provided to illiterate voters requiring assistance; provided however that an observer may not go behind the curtains of the voting machine, while the assisted voter is in the booth, unless requested to do so by the illiterate voter. If the illiterate voter makes such request, the voting commissioners shall allow the observer to go behind the curtains but solely for purposes of observing. The observer shall be under the same duty to preserve the secrecy of the ballot as are the commissioners."

Dated this 12th day of August, 1966.

JOHN MINOR WISDOM,
United States Circuit Judge.

HERBERT W. CHRISTENBERRY,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

VERSUS

STATE OF LOUISIANA, ET AL,
Defendants.

CIVIL ACTION NO. 2866

SECOND ORDER OF CLARIFICATION

The parties to this action have requested that the Court modify and clarify its orders of August 10, 11, and 12, 1966.

I.

The defendants contend that additional identifying data for federally listed voters should be available to local election officials.

Congress did not intend that the federal listing procedure should conform to that of the state. Section 7(a) provides:

> . . . An application to an examiner shall be in such form as the Commission (Civil Service Commission) may require. . . .

Section 9(b) additionally provides:

> The times, places, procedures, and form for application and listing pursuant to this act . . . shall be prescribed by regulations promulgated by the Civil Service Commission. . . .

The report of the House Committee on the Judiciary contained the following explanation of the state laws to be applied:

> While State law prescribing qualifications is to govern, this means only State law not inconsistent with Federal law, including this act. State laws regulating the procedures for registration for voting need not be followed by Federal examiners.

The informational data the defendants contend is needed are not voting "qualifications". An applicant need not have any particular eye color or employer in order to "qualify" to register.

The Eligibility Lists of federally registered voters are sent to each parish registrar and they contain the following descriptive information—name, address, certificate of eligibility number, date of application, age of the applicant, ward and precinct. The certificate of eligibility to vote, which the applicant is given, contains a number (these certificates are numbered consecutively) and lists the name, address, state, parish, ward, precinct, and date of application of the voter. The certificate also has on it the signature of the applicant (which must be affixed in the presence of the federal examiner) and has on it the signature of the examiner.

Thus, when a person presents himself at the polls, the commissioner may check the number and name on his certificate to see if it corresponds to the number and name certified on the eligibility lists. He may

check to make sure that address, precinct, ward and date of application correspond properly from the certificate to the list. He may require the applicant to sign his name and compare his signature to the signature on the certificate. If he is still not satisfied, he may ask the applicant his age and look at the applicant to see if he is likely to be younger or older than the age which the examiner has certified him to be. (The voter's age is *not* contained on the certificate but is contained on the eligibility lists, so that an applicant asked his age would not have before him the answer to that question, and could not know the answer unless he is the person he represents himself to be.)

If the applicant does not have his certificate and there is some doubt about his identity he may obtain a duplicate at the Office of the Federal Examiner which is open on the day of every election and for 48 hours thereafter.

We agree with the position of the United States that federally listed persons should not be required to do anything further to establish their right to vote. The United States, however, has stated that it is willing to furnish to the election officials copies of the executed applications used by the Civil Service Commission in listing persons under the Act. These will be arranged by precinct and delivered before the run-off primary September 24, 1966. The use of these forms together with the certificates of eligibility and the normal knowledge of the commissioners of election of the persons who live in their community will,

in our view, go far toward meeting the identification questions posed by the State at the argument.

The United States has also offered to review the forms now used by the Civil Service Commission, and, applying the experience gained in the two primaries and the general election in Louisiana and the elections in other states covered by the Act, to advise the Court by December 1, 1966, of any revisions it believes should be made.

The Court approves the suggested offer of the United States. Accordingly, at this time, no change in its orders is necessary with respect to identification at the polls of federally listed voters.

II.

The defendants request that the Court modify its orders to do away with any assistance to illiterate voters. In its opinion of August 10, 1966, this Court said:

> Like any other law, this [test suspension] provision carries with it all means necessary and proper to carry out effectively the purposes of the law. . . . We cannot impute to Congress the self-defeating notion that an illiterate has the right to pull the lever of a voting machine, but not the right to know for whom he pulls the lever.

This construction of the Act agrees with that of the unanimous three-judge court in *United States v. Mississippi* (S.D.Miss., C.A. No. 3312, opinion dated May 21, 1966; Circuit Judge Brown and District Judges Clayton and Cox). Although Mississippi law at the

time of that decision made no provision for assistance to illiterates, the court stated (slip opinion at p. 6):

> We agree that the obvious sense of Congress is to assure not just registration but the full exercise of the right to vote itself. Indeed, the Act defines "vote" or "voting" in terms of any and "all action necessary to make a vote effective in any * * * election * * * [including] * * * casting a ballot * * *." § 13(c). [sic] We think some suitable arrangements must be made to afford this assistance; and there are ample resources under the Act to effectuate it. Cf. § 5; § 12(d).

The same result was reached by federal courts sitting in Alabama and South Carolina. See Judge Thomas's order in *United States v. Executive Committee of Greene County, Alabama*, 1966, 254 F. Supp. 547 and Judge Martin's order in *United States v. The County Executive Committee of the Democratic Party of Clarendon County, South Carolina*, (D.C. S. Car. C.A. No. 66-459), decided June 1966.

Present Louisiana law, as interpreted by the State Attorney General, permits the giving of assistance by poll commissioners to illiterates at general elections. See L.R.S. 18:732, 18:1185; Opinions of the Attorney General, February 5, 1964; Opinions of the Attorney General, 1960-62, p. 97. This Court's order of August 11, 1966, followed the precise language of L.R.S. 18:-350, as it read before its amendment in 1952, in prescribing the procedure to be followed in rendering assistance to illiterates at both primary and general elections.

There are varying degrees of illiteracy, and varying degrees of voter intelligence among functionally illiterate electors. Many illiterates are able to respond to symbols and numbers; others will memorize the positions on the ballot of those for whom they wish to vote. Still others, even if unable to do these things, are willing to take their chances rather than reveal their choices to polling officials. Nonetheless, those few voters who do not trust their own ability to cast a ballot effectively and are willing to seek assistance are, under the Voting Rights Act of 1965 as we read it, entitled to that assistance.

Contrary to the understanding of some persons, the federal observers observe; they do not render assistance to illiterates.

The United States calls our attention to the need for clarifying the duty of election commissioners to advise a person requiring assistance that he may, if he desires, have a federal observer go behind the curtain with him. Accordingly, paragraph c of the Order of Clarification is amended by the addition of the following language:

> The voting commissioners shall advise each person receiving assistance in casting his vote that federal observers are present to observe the act of voting, by machine or otherwise, and that he may, if he desires, have such an observer go behind the curtain to observe the marking and casting of his ballot by machine or otherwise.

Paragraph c will then read:

> Preventing such federal observers from observing

the assistance provided to illiterate voters requiring assistance; provided however that an observer may not go behind the curtains of the voting machine, while the assisted voter is in the booth, unless requested to do so by the illiterate voter. The voting commissioners shall advise each person receiving assistance in casting his vote that federal observers are present to observe the act of voting, by machine or otherwise, and that he may, if he desires, have such an observer go behind the curtain to observe the marking and casting of his ballot by machine or otherwise. If the illiterate voter makes such request, the voting commissioners shall allow the observer to go behind the curtains but solely for purposes of observing. The observer shall be under the same duty to preserve the secrecy of the ballot as are the commissioners.

III.

A suggestion was made at the hearing that the Court order observers not to be sent to certain parishes. The Court does not have such jurisdiction. Under Section 8 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, the appointment of observers is a matter of executive discretion and is not subject to judicial review. 42 U.S.C. 1973(b); *United States v. Bush*, , 310 U.S. 371.

Except as modified herein the previous orders are reaffirmed.

JOHN MINOR WISDOM,
United States Circuit Judge

HERBERT W. CHRISTENBERRY,
United States District Judge

WEST, District Judge, dissenting.

I respectfully dissent, reasons to be filed at a later time.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISON

UNITED STATES OF AMERICA,
Plaintiff,

VERSUS

STATE OF LOUISIANA, ET AL,
Defendants.

CIVIL ACTION
NUMBER 2866

WEST, District Judge, Dissenting:

I must respectfully dissent from the majority decision in this case to force the State of Louisiana to provide assistance to illiterates in the voting booth, in the actual casting of their votes, and to force the State of Louisiana to permit Federal observers to go into the voting booth with an illiterate voter and watch him vote because I sincerely believe they are wrong—dead wrong.

The Voting Rights Act of 1965 simply does not provide for such assistance, nor does it in any way authorize a Federal observer to watch a person cast his vote. Section 8 of the Voting Rights Act of 1965, 42 U.S.C.A. 1973, provides:

> "Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and

attend at any place for holding an election in such subdivision *for the purpose of observing whether persons who are entitled to vote are being permitted to vote*, and

(2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision *for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.* Such persons so assigned shall report to an examiner appointed for such political subdivision to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the Court." (Emphasis added.)

Thus, the function of the Federal observer is clearly defined, i.e., to observe whether persons who are entitled to vote are being permitted to vote and to observe whether votes cast by persons entitled to vote are being properly tabulated. By the express terms of the Act, the observers are allowed to enter only the "place for holding an election" and the "place for tabulating the votes cast." They are not authorized under any circumstances by this Act to enter the voting booth itself, nor to go behind the curtain of a voting machine, while a person is casting his vote.

Section 14(c) (1), 42 U.S.C.A. 1973 (c) (1) provides:

"The terms 'vote' or 'voting' shall include all action necessary to make a vote effective * * * including * * * casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast * * *."

Thus, when a person, whether literate or illiterate, is properly registered to vote, without discrimination, and then permitted, without hindrance or discrimination, to enter the voting booth and cast his vote as he sees fit, and when his vote, however cast, is included in the totals of votes cast, he has been allowed to "effectively" cast his vote. He is entitled to no more, and the Voting Rights Acts guarantees him no more. The illiterate voter is no more entitled under the Voting Rights Act to assistance *within the voting booth* than is the literate voter who might like some last minute assistance in making up his mind for whom to vote. The majority order in this case inserts into the Voting Rights Act that which Congress did not see fit to include. This Court has no authority whatsoever to so enlarge the provisions of the Act. At the risk of the suggestion being taken seriously, I must point out that if it is proper for this Court to order the State of Louisiana to furnish such assistance to illiterate voters who have been registered under the Act in order to make their vote "effective", then it might also be considered in order for the Court, if requested to do so, to order the State of Louisiana to furnish transportation to the polls for those illiterates who have been registered to vote under the Act but who, because of their inability to read the newspaper, are unable to determine where their voting place is located. For how can their vote be "effective" under the majority's interpretation of the word, if they cannot, without assistance, get to the voting place, and if such assistance is denied?

If the illiterate voter is entitled to such assistance inside the voting booth, why should not the literate voter be entitled to have a commissioner go inside the voting booth with him if he so desires to explain what some thirty or forty constitutional amendments are all about so that he may "effectively" cast his vote. The answer is simple. Such assistance is not necessary in order to make one's vote "effective." A person's vote is "effective" when cast, even though he may have voted for the wrong candidate. It is effective simply because, when counted, it adds one more vote to the total received by the candidate for whom he voted.

The Voting Rights Act was ostensibly intended by Congress to eliminate what it believed to be discrimination practiced in certain localities whereby certain elements of the population, even though qualified, were not allowed to register or to vote. No one can successfully argue against this noble purpose. To prohibit qualified persons from voting is both undemocratic and reprehensible. But in its zeal to protect the rights of qualified voters, Congress enacted the Voting Rights Act of 1965 which, despite United States Supreme Court pronouncements to the contrary, I sincerely believe to be totally and completely unconstitutional. I believe that it is unconstitutional even when its operation is confined to the provisions contained therein. But when, as done here by the majority of this Court, its ambit is extended to include areas clearly beyond anything intended or provided by Congress in the Act, its unconstitutionality is not only

apparent but it is glaring. This Court is, of course, bound by the pronouncements of the United States Supreme Court. But it has no right whatsoever to usurp the power of Congress to legislate, and that is exactly what I believe it has done in this instance.

State law in Louisiana specifically denies assistance to illiterate voters in casting their ballot. This is not in conflict with the clear provisions of the Voting Rights Act, and thus there is no occasion to invoke the Supremacy Clause of the United States Constitution. The Voting Rights Act only nullifies such State laws as are in conflict therewith, and since the Voting Rights Act does not provide for assistance to illiterates inside the voting booth, the State law specifically denying such assistance is not in conflict with Federal law. Louisiana employs the system of identifying all candidates and issues on the voting machine by assigning numbers thereto. This is for the express purpose of making it possible for voters to acquaint themselves with numbers rather than with names and thus simplifying the voting process. These numbers are widely publicized by candidates and newspapers and all other news media and all voters are urged to vote by number. Even the most illiterate voter may determine ahead of time the numbers of the candidates for whom he wishes to vote and bring a sample ballot with him into the voting booth, and thus eliminate the need for assistance inside of the voting booth. The right of illiterates to have assistance in the actual casting of their ballot was specifically eliminated by the State of Louisiana in 1952

as a part of a reform movement to eliminate crooked elections. It has worked, and it should be allowed to continue to work. The position taken by the majority of the Court in this case sets the State of Louisiana back fourteen years and once again opens the door to fraudulent elections, to say nothing of the fact that it puts the long-cherished secrecy of the ballot in serious jeopardy. The Voting Rights Act of 1965, in my opinion, constitutes invidious discrimination against the six or seven states affected by its provisions, and the order of this Court adds materially to that discrimination. And even if it were conceded that the Voting Rights Act requires such assistance to illiterate voters, as the majority of this Court has decreed, it then necessarily follows that such a requirement must result in the most invidious kind of discrimination against the illiterate voters in all of the forty-three or forty-four states not affected by the Voting Rights Act who may not, under the laws of their particular state, be entitled to such assistance. And, if it is necessary, in order to make the vote of an illiterate "effective", to have a Federal observer watch him vote, then the order of this Court is obviously discriminatory because it only authorizes observers in the six parishes wherein Federal examiners are located, thus, apparently making the vote of illiterates in the remaining fifty-seven parishes of the State "ineffective" because of the absence of Federal observers. There is simply no way to square this type of discrimination with the Due Process Clause and the Equal Protection Clause of the United States Con-

stitution, to say nothing of its obvious conflict with the Tenth Amendment. I must, for these reasons, respectfully dissent from the opinion of the majority in this case.

Baton Rouge, Louisiana, September 20, 1966.

E. GORDON WEST,
United States District Judge.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 938

STATE OF LOUISIANA, ET AL., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Rules of this Court, the United States of America moves that the judgment of the district court be affirmed.

QUESTIONS PRESENTED

Upon promulgation of the Voting Rights Act of 1965, 79 Stat. 437 *et seq.*, 42 U.S.C. (Supp. I) 1973 *et seq.*, the Attorney General certified that the State of Louisiana maintained on November 1, 1964, a test or device within the meaning of Section 4(c) of the Act, 42 U.S.C. 1973b(c), and the Director of the Census certified that less than 50 per centum of the persons of voting age residing in Louisiana voted in the presi-

dential election of November 1964. The Act thereby having been made applicable to Louisiana, no person therein could any longer be denied the franchise for failure to comply with any "test or device" (§4, 42 U.S.C. 1973b), and the Attorney General was authorized to direct the assignment of federal examiners (and also, in that event, observers) to any subdivision as necessary (§§ 6, 8, 42 U.S.C. 1973d, 1973f). Examiners were in fact appointed to serve in six parishes in Louisiana,[1] and, from time to time, federal observers also have been appointed to watch the elections in these parishes. Against this background, the questions presented are:

1. Whether the accuracy of the determinations of the Attorney General and the Director of the Census, which "triggered" Louisiana's coverage by the Voting Rights Act, are judicially reviewable.

2. Whether it is improper for examiners to list as eligible to vote persons who will reach age 21 by the next election.

3. Whether it is improper for the examiners to use application forms which fail to elicit personal data from applicants for listing ostensibly to be used for identification (such as their race and mother's maiden name), which have no bearing on their qualification to vote; and whether State election officials may refuse to permit federally-listed persons to vote because such information as to them is not transmitted on the examiners' lists.

4. Whether the court below properly enjoined enforcement of LSA–R.S. 18:350, insofar as it pro-

[1] Madison, East Carroll, East Feliciana, West Feliciana, Plaquemines, and Ouachita Parishes.

hibits rendering assistance to illiterates at the polls, and properly directed election officials to render such assistance.

5. Whether federal observers may properly be present within the voting places and may, upon request of an illiterate voter, observe the assistance rendered by State officials to him in casting his ballot.

STATEMENT

This is an appeal from a final judgment entered by a three-judge district court in the Eastern District of Louisiana convened pursuant to 28 U.S.C. 2281. The relief sought by the original complaint was an order enjoining the enforcement of Article VIII, Section 1, of the Louisiana Constitution and implementing statutes, insofar as these provisions required the registration application form to be used as a test, which, if completed incorrectly, disqualified the applicant for registration.[2] The allegation was that the use of that particular application form as a test for registration violated the Fourteenth and Fifteenth Amendments.

On November 30, 1964, the court below heard the case on the merits, but no decision had been rendered by August 6, 1965, when the President signed into law the Voting Rights Act, 42 U.S.C. 1973 *et seq.*. On the latter day, pursuant to Section 4(b) of the Act (42 U.S.C. 1973b(b)) the Attorney General determined that the State of Louisiana on November 1, 1964 maintained a test or device within the meaning of Section

[2] The United States also requested relief aimed at prohibiting racial discrimination in the registration process in the State of Louisiana.

4(c) and, on the same day, the Director of the Census certified that less than 50 per centum of the persons of voting age residing in Louisiana voted in the presidential election of 1964. The determination of the Attorney General and the certification of the Director of the Census became effective on August 7, 1965 upon publication in the Federal Register. 30 Fed. Reg. 9897. On August 9, 1965, in accordance with Section 6 of the Voting Rights Act, 42 U.S.C. 1973d, the Attorney General certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment in East Carroll, East Feliciana and Plaquemines Parishes, Louisiana. 30 Fed. Reg. 9971. On August 18, 1965 and on October 29, 1965, the Attorney General made like certifications with respect to Ouachita and West Feliciana Parishes. 30 Fed. Reg. 10863, 13849. Federal examiners went on duty in each of the parishes named in the Attorney General's certification. By the end of November 1965 the examiners in the five parishes had listed more than 13,000 persons as eligible to vote and had transmitted the names of persons so listed to the appropriate parish registrars, who, pursuant to Section 7(b) of the Voting Rights Act, 42 U.S.C. 1973e(b), were required to place the names on the official state voting lists.

In the meantime, defendant Gremillion brought suit in the State courts against defendant Manning, the Registrar in East Carroll Parish; defendant Perez brought suit against defendant Lyons, the Registrar of Plaquemines Parish; and defendant Lassiter brought suit against defendant Lucky, the Registrar of Ouachita Parish. Orders were issued in each of

these State court suits enjoining the respective registrars from placing on the official State voting lists the names of persons listed and transmitted to them by the federal examiners. The registrars in all five of the parishes—including the two parishes in which there was no State court injunction—refused to place on the official voting lists the names of persons listed and transmitted by the examiners.

On November 15, 1965, the United States filed a supplemental complaint and a motion to add and drop parties.[4] The supplemental complaint, based on the Voting Rights Act, sought an injunction requiring the named registrars to place on the official State voting lists the names of persons listed and transmitted by the examiners and asked the court to set aside the State court injunctions prohibiting parish registrars from giving full force and effect to the lists of eligible voters transmitted to them by the examiners. The United States also requested an injunction restraining the defendants and their agents from giving any force and effect to the provisions of Article VIII, Sections 1 and 18, of the Constitution of Louisiana, and Sections 31(2), 32, 36, and 191A of Title 18 of the Louisiana Revised Statutes, insofar as these pro-

[4] Jack Gremillion, Attorney General of the State of Louisiana, Alvin P. Lassiter, District Attorney for the Fourth Judicial District, Mae Lucky, Registrar in Ouachita Parish, L. H. Perez, District Attorney for the Twenty-fifth Judicial District, Roy Lyons, Registrar in Plaquemines Parish, and Cecil Manning, Registrar in East Carroll Parish, were added as parties. The Board of Registration and its members named in the original complaint were dropped. The Board is charged with the duty of regulating voting registration and prescribing the forms to be used in the registration process. The State was maintained as a party.

visions require an applicant for registration to demonstrate his ability to read and write or his understanding of the duties and obligations of citizenship or to complete an application form without assistance.

The defendants' answer challenged the constitutionality of the Voting Rights Act, the determination of the Attorney General that Louisiana maintained a test or device, the certification of the Director of the Census that less than 50 per centum of the persons of voting age residing in Louisiana voted in the presidential election of 1964, and the Attorney General's certification that examiners were necessary in the five parishes to which they had been assigned. In addition, the defendants contended that the examiners were listing persons who did not meet Louisiana's age and residence requirements and had refused to furnish registrars with identification information such as race, color of eyes, mother's maiden name, occupation, sex, and name of employer.

The court below, relying on this Court's decision in *South Carolina* v. *Katzenbach*, 383 U.S. 301, rejected all the defendants' arguments, except the contention that the examiners had made a minor technical error in applying the Louisiana residence qualification.[4] The court thereupon ordered the defendants and their agents to place on the official voting lists the names of persons listed and transmitted by the examiners,

[4] The United States was ordered to contact persons listed who had not met the residence requirement as of the date of listing and to remove from the eligibility lists those who, by the date of the court's order, no longer resided at the address given at the time of listing. This order has been complied with.

notwithstanding the contrary State court injunctions, which were held void. The court further ordered the defendants and their agents to provide assistance to each voter who, because of inability to read or write, needed assistance at the polls.[5]

The following day the court amended its order, particularizing the manner in which assistance was to be given voters who were unable to read or write. In brief, the order provides that the commissioner of elections selected by the voter, who declares under oath that he is unable to read or write, is to ascertain the wishes of the voter and cast the voter's ballot accordingly. The commissioner is also required to advise the voter whom he is to assist that an observer will observe the assistance he renders, if the voter so desires. On August 12, 1966, the court issued another order clarifying its prior order. The order of clarification enjoined the defendants and their agents from interfering with federal observers (appointed under Section 8 of the Act, 42 U.S.C. 1973f) exercising any of the powers or performing any of the duties vested in them by the Act. Specifically, they were enjoined from preventing federal observers from observing the assistance provided to voters who are unable to read or write. Under the order observers are permitted to go behind the curtains of the voting machine to observe

[5] The court had found that Louisiana Act 499 of 1960, amending LSA–R.S. 18:350, which prohibited assistance to be given to persons unable to read or write in the casting of their votes, was in conflict with the Voting Rights Act. Judge West dissented from this part of the court's decision.

the assistance rendered only when requested to do so by the voter.*

ARGUMENT

1. Louisiana argues that it is not within the coverage formula of Section 4(b) of the Voting Rights Act † because more than 50 percent of its citizens voted in the Presidential election of November 1964. The short answer is that the Director of the Census has made a determination to the contrary. The State's argument amounts to a challenge to the Director's determination—a challenge which no court is permitted to entertain. Indeed, Section 4(b) expressly provides

* Although the court below enjoined the enforcement of a State constitutional provision and implementing statutes without invoking a substantive provision of the Constitution (see *Swift & Co.* v. *Wickham*, 382 U.S. 111), it nevertheless had jurisdiction under 28 U.S.C. 2281 to render the decision from which the defendants appeal. The United States in its original complaint requested an order enjoining the enforcement by State officials of certain State constitutional and statutory provisions on the ground of their inconsistency with the Fourteenth and Fifteenth Amendments. Since the three-judge court might have premised its decision on the Constitution, it had jurisdiction of the case even though it ultimately granted relief on Supremacy Clause grounds alone. *Florida Lime and Avocado Growers, Inc.* v. *Jacobsen*, 362 U.S. 73. Thus an appeal properly lies to this Court.

† Section 4(b) provides:

"The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964."

* * * * *

that the determination of the Director of the Census "shall not be reviewable in any court. * * *" The legislative history is equally clear. See *H. Rep. No. 439*, 89th Cong., 1st Sess., at 25; *S. Rep. No. 162*, 89th Cong., 1st Sess., Part 3, at 22. Moreover, in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 332–333, this Court upheld the constitutionality of this withdrawal of judicial review and expressly rejected the argument that this "provision is invalid because it allows the new remedies of the Act to be imposed in an arbitrary way."[8]

In any event, Louisiana's challenge to the certification of the Director of the Census is baseless.[9] It was stipulated that the Director determined that 1,893,000 persons of voting age (21 years and over) resided in

[8] This Court said (at 383):

"* * * The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the statutory rights of private parties. For example, see *United States* v. *California Eastern Line*, 348 U.S. 351; *Switchmen's Union* v. *National Mediation Bd.*, 320 U.S. 297. In this instance, the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under § 4(b), provided of course that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review."

[9] Louisiana does not appear to be seriously urging its claim below that the Attorney General erred in determining that Louisiana maintained a test or device within the meaning of Section 4(c). The fact is that Louisiana maintained every test or device mentioned in Section 4(c) of the Act, and more than one of some of them.

Louisiana on November 1, 1964 and that 896,293 persons voted for President in the Presidential election of 1964. Thus, it was stipulated that the Director determined that 47.3% of Louisiana's voting age population voted for President in the Presidential election of 1964. To be sure, the Director did not count the more than 45,000 persons who voted in the general election at which Presidential electors were chosen but who did not vote for a presidential candidate. But the legislative history is clear that by "presidential election" Congress meant the vote cast for candidates for President and Vice-President (or electors therefor). As the House Report states (*H. Rep. No. 439*, 89th Cong., 1st Sess., at 25):

> The Director of the Census must determine that less than 50 per centum of the persons of voting age residing in any State * * * voted in the presidential election of 1964. *The vote in the presidential election of 1964 is the vote cast for the presidential candidates.* * * * [Emphasis added.]

See the Senate Report for a similar statement. *S. Rep. No. 162*, 89th Cong., 1st Sess., Part 3, at 23.

Louisiana also objects to the Director's inclusion in the figure representing total voting age population of classes of persons ineligible to vote, such as convicted felons and out-of-State military personnel stationed in Louisiana. But, again, the Director did what Congress intended—he included all persons of voting age in his computation. Congress rejected an amendment to the Act's triggering clause which would have required the Director to exclude from total vot-

ing age population some classes of persons ineligible to vote, specifically aliens and persons in active military service and their dependents.[10] See the bill reported out of the Senate Judiciary Committee, 111 Cong. Rec. 7801–7804, amended 111 Cong. 11752–11755.

Finally, and conclusively, it is clear that Congress contemplated that the Director would base his computation on the figures he used. Indeed, in the computation underlying his certification which resulted in subjecting Louisiana to the Act, he used the identical figures submitted to the Congress by the Attorney General and the Census Bureau while the bill was being considered—figures on which the Congress relied in determining which states the bill would cover. See *Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, on H.R. 6400,* 89th Cong., 1st Sess., at 29; *Hearings before the Senate Committee on the Judiciary on S. 1564,* Part 2, 89th Cong., 1st Sess., at 1459. The fact is that Louisiana's argument amounts to saying that Congress did not intend the Act to cover Louisiana—an untenable claim in light of that State's position as a violator of the Fifteenth Amendment. See *Louisiana* v. *United States,* 380 U.S. 145; *S. Rep., supra,* at 47.

2. Louisiana objects to federal examiners listing persons who will reach their twenty-first birthday by the date of the next election (and who otherwise possess the qualifications established by Louisiana). But

[10] Even under such a triggering clause, Congress intended to cover Louisiana. See *S. Rep. No. 162, supra,* at 52.

this is in exact accord with State law (LSA–R.S. § 18:31 (1965 Cum. Supp.)) which provides:

> Every citizen of the United States and Louisiana, native born or naturalized, who is 21 years of age or *who will have attained the age of 21 years prior to the next election* and who * * * [is otherwise qualified] shall be eligible for registration as a voter. [Emphasis added.]

See, also, Article VIII, Section 1, of the Louisiana Constitution. Not only is the text of the statute clear, but the Louisiana Court of Appeal in *Perez* v. *Rhiddlehoover*, 186 So. 2d 686, 691 (1966), upheld the construction placed on the statute by the examiners.[11]

3. Louisiana claims that the examiners erred in not eliciting certain information from applicants, allegedly designed to facilitate identification of the voter at the polls. Article VIII, Section 1(e), of the Louisiana Constitution requires a person attempting to vote to "be able to establish that he is the identical person whom he represents himself to be when applying for registration, and when presenting himself at the polls for the purpose of voting in any election or

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[11] The court said:

"The preamble to Act 197 of 1962 [LSA–R.S. § 18:31] states that it is an Act 'to permit the registration of persons under the age of 21 years who will attain the age of 21 years prior to the next election.' This, in conjunction with the language embodied in the Act itself which stipulates that a person twenty-one years of age 'or who will have attained the age of 21 years' shall be eligible for registration as a voter, leaves no doubt in our minds that the legislature fully intended to provide for the registration in the future of persons who will have attained the age of twenty-one years prior to the next election."

primary election." To facilitate identification of the voter LSA-R.S. § 18:235(2)(A)(k) provides that the registration form shall contain spaces for the following data: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race or color, occupation, and whether owner, tenant, boarder or other. The form which the examiners use contains space for listing the applicant's date of birth, but does not elicit the other data mentioned above.[11]

Pursuant to Sections 7(a) and 9(b) of the Voting Rights Act, the forms and procedures for listing are to be prescribed by the Civil Service Commission. And it is only with respect to State voting "qualifications" that State law is to control. Section 9(b), 42 U.S.C. 1973g(b), provides;

> The times, places, procedures, and form for application and listing pursuant to this Act * * * shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing * * *.

The House Report confirms what is explicit in the text. Referring to Section 9(b), the Report explains (*H. Rep. No. 439*, 89th Cong., 1st Sess., at 29):

> While relevant State substantive laws not incon-

[11] The listing forms have since been changed to elicit whether the applicant is "Mr.", "Mrs.", or "Miss", thus providing information as to the sex of the applicant.

> sistent with Federal law will be applied, *State laws relating to registration procedures need not be followed by examiners. It is expected that the application form will be simple.* [Emphasis added.]

Since information with respect to an applicant's place of birth, mother's first or maiden name, color of eyes, sex, race or color, occupation, and whether owner, tenant or boarder, has nothing to do with determining the applicant's qualification to vote, it need not be elicited or transmitted to the State election officials.[13]

Nor is there a practical difficulty involved. The information forwarded to the respective registrars by the examiners is more than adequate to enable a person listed by an examiner to identify himself at the polls. In our view what was said by the court below fully disposes of the matter.[14]

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[13] While Louisiana does not suggest in the Jurisdictional Statement which voting requirements federal examiners are allegedly misapplying (J.S. 16), the two discussed above—Louisiana's age and identification requirements—are the only ones in dispute following the lower court's decision.

[14] The court below said (Pet. 51):

"The Eligibility List of federally registered voters are sent to each parish registrar and they contain the following descriptive information—name, address, certificate of eligibility number, date of application, age of the applicant, ward and precinct. The certificate of eligibility to vote, which the applicant is given, contains a number (these certificates are numbered consecutively) and lists of the name, address, state, parish, ward, precinct, and date of application of the voter. The certificate also has on it the signature of the applicant (which must be affixed in the presence of the federal examiner) and has on it the signature of the examiner.

"Thus, when a person presents himself at the polls, the commissioner may check the number and name on his certificate

4. The court properly enjoined enforcement of Louisiana Act 499 of 1960, amending LSA–R.S. 18:350, insofar as it prohibited commissioners of elections to render assistance to voters who are unable to read or write. Since the Voting Rights Act provides that "no citizen shall be denied the right to vote" in any election for failure to pass any literacy test (§ 4(a)), it follows that Congress intended that illiterates shall be registered to vote. This was expressly recognized by this Court in *South Carolina* v. *Katzenbach, supra,* at 334, and so held by the Court of Appeals for the Fifth Circuit in *Dent* v. *Duncan,* 360 F. 2d 333, and another three-judge court in *United States* v. *Mississippi,* 256 F. Supp, 344, 347 (S.D. Miss.). The legislative history leaves no doubt on this score. See, *e.g., Hearings Before Subcommittee No. 5 of the House Judiciary Committee on H.R. 6400,* 89th Cong., 1st Sess., pp. 16–17 (statement

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to see if it corresponds to the number and name certified on the eligibility lists. He may check to make sure that address, precinct, ward and date of application correspond properly from the certificate to the list. He may require the applicant to sign his name and compare his signature to the signature on the certificate. If he is still not satisfied, he may ask the applicant his age and look at the applicant to see if he is likely to be younger or older than the age which the examiner has certified him to be. (The voter's age is *not* contained on the certificate but is contained on the eligibility lists, so that an applicant asked his age would not have before him the answer to that question, and could not know the answer unless he is the person he represents himself to be.)

"If the applicant does not have his certificate and there is some doubt about his identity he may obtain a duplicate at the Office of the Federal Examiner which is open on the day of every election and for 48 hours thereafter."

of the Attorney General Katzenbach); *Hearings Before the Senate Committee on the Judiciary on S. 1564,* 89th Cong., 1st Sess., pp. 22–23 (statement of Attorney General Katzenbach); 111 Cong. Rec. 8481 (Senator Bayh).

Congress having intended to enfranchise illiterates, a State law denying them assistance must fall, else the granted right is not effective—contrary to the express direction of Congress. See Section 14(c)(1), 42 U.S.C. 1973*l*(c)(1). Thus State officials who fail to render assistance necessarily violate the Act. As the court below said (Pet. 34, 53):

> We cannot impute to Congress the self-defeating notion that an illiterate has the right to pull a lever of a voting machine, but not the right to know for whom he pulls the lever.

See, also, *United States* v. *Mississippi,* 256 F. Supp. 344, 348 (S.D. Miss., three-judge court).[15]

5. The powers and duties of federal observers are derived from Section 8, 42 U.S.C. 1973f. Observers are, *inter alia,* "to enter and attend at any place for

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[15] In *United States* v. *Mississippi, supra* at 349, the court's declaratory judgment read:

* * * * *

"It is the duty and responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision."

* * * * *

holding an election * * * for the purpose of observing whether persons who are entitled to vote are being permitted to vote * * *." "Vote" being defined as "all action necessary to make a vote effective" including "casting a ballot, and having such ballot counted properly" (§ 14(c)(1), *supra*), it seems plain that an observer must be permitted to watch persons assisting illiterates in marking their ballots if the observers are to carry out their statutory mandate. There is no countervailing interest to protect where, as provided by the order of the court below, such observation is limited to instances where the voter requests it.[16] The lower courts have uniformly so held. See *United States* v. *Executive Committee of the Democratic Party of Greene County, Alabama,* 254 F. Supp. 543 (S.D. Ala.); *United States* v. *The Executive Committee of the Democratic Party of Clarendon County, South Carolina,* Civ. Action No. 66–459 (D.C.S.C., decided June, 1966). And in light of the history of practices in Louisiana which have disfranchised Negroes in the past and the likely reluctance of illiterate Negroes there to assert their rights, it is wholly appropriate to require, as the court below and other courts have done, that State election officials advise illiterates of their right to have a federal observer watch the assistance given them by the local official.

[16] The order provides that the commissioner and the observer are not to make known the way an assisted voter casts his ballot.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the district court should be affirmed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

LOUISIANA ET AL. *v.* UNITED STATES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 938. Decided March 13, 1967.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE BLACK and MR. JUSTICE WHITE are of the opinion that probable jurisdiction should be noted and the case set for hearing.